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PHOENIX, ARIZONA

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ARIZONA ATTORNEY GENERAL

August 2, 1972

DEPARTMENT OF LAW LETTER OPINION NO. 72-30-L (R-64)

REQUESTED BY: THE HONORABLE ROBERT R. BEAN  
Pinal County Attorney

QUESTION: What is the definition of portable buildings under A.R.S. § 15-445.B.3, following the development of a new type of building which rests on a concrete slab?

ANSWER: See body of opinion.

This office has considered portable relocatable classrooms in numerous opinions. In this deluge of words we have considered the definition of such buildings twice--once in Concurring Opinion No. 70-17-C, where we expanded the definition of classroom, and in Department of Law Letter Opinion No. 70-6-L, where we dealt with the requirements of portability for capital outlay purposes. In the latter opinion we stated that the building must be truly portable and capable of being removed without permanent damage to the realty.

As noted in the request, technology has outrun us. The mind boggles at the notion of lawyers debating endlessly the metaphysical difference between concrete piers and concrete pads. The phrase used in the request--"permanent portable buildings"--conjures up angels doing close order drill on the heads of pins. At this point we are reduced to the position of the learned Supreme Court Justice who, in trying to describe pornography, moaned, "I can't describe it, but I know it when I see it." Therefore, we submit the following.

If the building is capable of being moved from one spot to another, at less expense than building a new building, it is prima facie portable and relocatable. The burden then shifts to he who would gainsay to move forward with the evidence. Points which should be considered are:

1. Ease of relocation;
2. Damage to the land by the relocation;
3. Supporting structures (slabs, pillars, basements, pipes, septic tanks, etc.);

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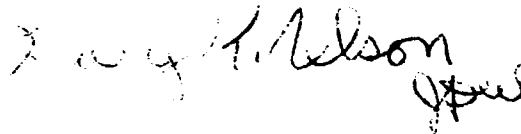
4. The time required to relocate the building;

5. The expense of the relocation.

In resolving this question, I believe the County Attorney will have to fall back on the test used by the courts for directed verdicts. Unless reasonable men cannot differ as to the portability of the building, the decision of the school board should be binding. If a party who has standing to complain objects, the issue should then be settled by the courts.

The Attorney General has neither the resources nor the manpower to inspect and rule on each proposed purchase. We are sure that the County Attorney, while being in a better position to make such rulings, is also unequipped to act as a building inspector. Therefore, opinions of the County Attorneys which show that the guidelines set forth above have been considered will be concurred in by this office until such time as the Legislature defines portable buildings.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "Gary K. Nelson", with a stylized flourish or initial at the end.

GARY K. NELSON  
The Attorney General

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